



November 1, 1999

Ms. Betty J. Marks  
General Counsel  
Texas Department of Housing and Community Affairs  
P. O. Box 13941  
Austin, Texas 78711-3941

OR99-3080

Dear Ms. Marks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130080.

The Texas Department of Housing and Community Affairs (the "department") received a request for a copy of the application submitted by Countrywide Home Loans, Inc., pursuant to a posting in the *Texas Register* which solicited offers for Master Servicer. You seek to withhold the requested information under section 552.104 or section 552.110 of the Government Code. Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). As the exception was developed to protect a governmental body's interests, that governmental body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).


We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish

additional information relating to the proposed contract, bidding should be deemed competitive, and, therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded, Open Records Decision No. 541 (1990).

You have informed us that the deadline to submit bids was extended until November 12, 1999. You may withhold all of the submitted materials under section 552.104 until the contract is awarded and executed. Since we are ruling that the entire application is exempt from required disclosure under section 552.104 while the opportunity for others to submit bids or additional information is still available, an analysis under section 552.110 is unnecessary.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 130080

Encl. Submitted documents

cc: Mr. Michael A. Sullivan  
CFO and Interim President  
Texas Star Mortgage Company  
P. O. Box 50264  
Austin, Texas 78463-0264  
(w/o enclosures)